

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

ACTUS, LLC,

Plaintiff,

v.

- (1) BANK OF AMERICA CORP.;**
- (2) BLAZE MOBILE, INC.;**
- (3) CAPITAL ONE FINANCIAL CORP.;**
- (4) ENABLE HOLDINGS, INC.;**
- (5) GOOGLE, INC.;**
- (6) GREEN DOT CORP.;**
- (7) JAVIEN DIGITAL PAYMENT
SOLUTIONS, INC.;**
- (8) JPMORGAN CHASE & CO.;**
- (9) MASTERCARD INTERNATIONAL,
INC.;**
- (10) META FINANCIAL GROUP, INC.;**
- (11) M&T BANK CORP.;**
- (12) OBOPAY, INC.;**
- (13) SONIC SOLUTIONS;**
- (14) VISA, INC.;**
- (15) VIVENDI UNIVERSAL U.S.
HOLDING CO.;**
- (16) VIVENDI UNIVERSAL, SA;**
- (17) WAL-MART STORES, INC.;**
- (18) THE WALT DISNEY CO.;**
- (19) THE WESTERN UNION CO.;**
- (20) WILDTANGENT, INC.;**
- (21) AGILECO,**

Defendants.

CASE NO. 2:09-cv-102-TJW(CE)

JURY TRIAL DEMANDED

PLAINTIFF'S RESPONSE TO DEFENDANT OBOPAY, INC.'S COUNTERCLAIMS

Plaintiff Actus, LLC (“Actus”) hereby responds to each paragraph of Defendant Obopay, Inc.’s (“Obopay”) counterclaims as follows, wherein each and every paragraph is hereby incorporated by reference into each and every answer to each and every Count:

COUNTERCLAIMS

THE PARTIES

1. Admitted upon information and belief.
2. Admitted.

JURISDICTION AND VENUE

3. Admitted.
4. Admitted.

COUNTERCLAIMS FOR DECLARATORY RELIEF

FIRST CLAIM FOR RELIEF: DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 7,328,189

5. Actus restates and incorporates by reference each of its responses to the allegations of paragraphs 1-4 of the Obopay’s Counterclaims above, as if fully set forth herein.
6. Admitted.
7. Denied.

SECOND CLAIM FOR RELIEF: DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 7,249,099

8. Actus restates and incorporates by reference each of its responses to the allegations of paragraphs 1-4 of the Obopay’s Counterclaims above, as if fully set forth herein.
9. Admitted.
10. Denied.

THIRD CLAIM FOR RELIEF: DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 7,177,838

11. Actus restates and incorporates by reference each of its responses to the allegations of paragraphs 1-4 of the Obopay's Counterclaims above, as if fully set forth herein.

12. Admitted.

13. Denied.

**FOURTH CLAIM FOR RELIEF: DECLARATION OF INVALIDITY OF U.S. PATENT
NO. 7,328,189**

14. Actus restates and incorporates by reference each of its responses to the allegations of paragraphs 1-4 of the Obopay's Counterclaims above, as if fully set forth herein.

15. Admitted.

16. Denied.

**FIFTH CLAIM FOR RELIEF: DECLARATION OF INVALIDITY OF U.S. PATENT
NO. 7,249,099**

17. Actus restates and incorporates by reference each of its responses to the allegations of paragraphs 1-4 of the Obopay's Counterclaims above, as if fully set forth herein.

18. Admitted.

19. Denied.

**SIXTH CLAIM FOR RELIEF: DECLARATION OF INVALIDITY OF U.S. PATENT
NO. 7,177,838**

20. Actus restates and incorporates by reference each of its responses to the allegations of paragraphs 1-4 of the Obopay's Counterclaims above, as if fully set forth herein.

21. Admitted.

22. Denied.

EXCEPTIONAL CASE

23. Denied.

RESEPNSE TO PRAYER FOR RELIEF IN OBOPAY'S COUNTERCLAIMS

Actus denies that Obopay is entitled to any of the relief requested in its Prayer.

PRAYER FOR RELIEF

In addition to the relief requested in its First Amended Complaint, Actus respectfully requests a judgment against Obopay as follows:

- A. That Obopay take nothing by its Counterclaims;
- B. That the Court award Actus all costs and attorneys' fees incurred in defending against Obopay's Counterclaims;
- C. Any and all further relief that the Court deems just and proper.

Dated: June 23, 2009

Respectfully submitted,

/s/ William E. Davis, III
William E. Davis, III
TX State Bar No. 24047416

The Davis Firm, PC
111 W. Tyler St.
Longview, TX 75601
Ph: 903-230-9090
Fx: 903-230-0661
bdavis@bdavisfirm.com

Attorney for Actus, LLC

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, the foregoing was served on all counsel of record who have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(d), all others not deemed to have consented to electronic service were served with a true and correct copy of the foregoing via email on this 23rd day of June, 2009.

/s/ William E. Davis, III
William E. Davis, III